

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROLAND DEWITT PUGH,

Plaintiff,

No. CIV S-05-0002 FCD GGH P

vs.

DR. MERICLE,

Defendant.

ORDER

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Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff paid the fee in full at the outset of this case and did not seek leave to proceed in forma pauperis. By order filed on April 22, 2005, plaintiff was provided with a summons and directed to complete service of process upon defendant within 60 days. By order filed on May 12, 2005, the court directed the court clerk to correct the spelling of defendant's name and issue a new summons. On June 3, 2005, the docket indicates that plaintiff filed an executed service of summons and complaint, signed by an individual who is apparently a process server. On June 27, 2005, plaintiff filed a declaration, with a June 10, 2005, the High Desert State Prison litigation department memo, indicating that the complaint and summons were being returned to the process server.

On October 13, 2005, plaintiff was provided an additional opportunity to properly

1 serve defendant Mericle within sixty days. Pursuant to plaintiff's status report filed January 11,  
2 2006, plaintiff has been unsuccessful in serving defendant Mericle.

3 Plaintiff will be given the opportunity to file a request for leave to proceed in  
4 forma pauperis.<sup>1</sup> See 28 U.S.C. § 1915(a). **If plaintiff qualifies for in forma pauperis status,**  
5 **he will have the benefit of, for example, having the U.S. Marshal serve his complaint upon**  
6 **defendant, rather than being responsible for serving process himself.** Plaintiff will be given  
7 thirty days to file an application for leave to proceed in forma pauperis, using the form provided  
8 by the court with this order. Should plaintiff fail to provide the requisite application or should  
9 plaintiff fail to qualify for in forma pauperis status upon the court's review of the application, this  
10 court will recommend dismissal of this action, as it appears to be futile for plaintiff to be granted  
11 any further opportunity to attempt to serve this complaint.<sup>2</sup> See Order, filed on October 13, 2005,  
12 wherein it was explained that under Fed. R. Civ. P. 4(e), plaintiff must serve the summons and  
13 complaint per Cal. Code Civ. Pro. § 415.30, and wherein the appropriate procedures were set  
14 forth.

15 In accordance with the above, IT IS HEREBY ORDERED: the Clerk of the Court  
16 is directed to provide plaintiff with an Application to Proceed In Forma Pauperis; plaintiff must  
17 file the application within thirty days of the filed date of this order.

18 DATED: 10/30/06

19 /s/ Gregory G. Hollows

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UNITED STATES MAGISTRATE JUDGE

21 GGH:009/035  
22 pugh0002.ser

23 <sup>1</sup> See Information to Prisoners Seeking Leave to Proceed with a Civil Action in Federal  
24 Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915.

25 <sup>2</sup> In his status report, plaintiff includes another High Desert State Prison Litigation Dept.,  
26 memo, this one dated December 27, 2005, indicating that documents intended to be served upon  
defendant Mericle were being returned as he was a contract physician no longer at HDSP, for  
whom they have no forwarding address.